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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

DEYRA AREVALO,

Plaintiff and Respondent,

v.

EDGAR CORRALES,

Defendant and Appellant;

DEPARTMENT OF CHILD
SUPPORT SERVICES,

Respondent.

E057626

(Super.Ct.No. SBFSS55174)

OPINION

APPEAL from the Superior Court of San Bernardino County. Diane I. Anderson,
Temporary Judge. (Pursuant to Cal. Const., art. VI, § 21.) Affirmed.

Edgar Corrales, in pro. per., for Defendant and Appellant.

No appearance for Plaintiff and Respondent Deyra Arevalo.

Kamala D. Harris, Attorney General, Julie Weng-Gutierrez, Assistant Attorney General, Linda M. Gonzalez and Marina L. Soto, Deputy Attorneys General, for Respondent Department of Child Support Services.

Defendant and appellant Edgar Corrales appeals from an order determining arrearages in his child support payments. Respondent, the San Bernardino County Department of Child Support Services (DCSS), argues that appellant's arguments should be rejected but that we should nevertheless remand the matter for recalculation of the arrearages because the trial court's calculation might have been based on a superseded support order.

We will affirm the judgment.

FACTUAL AND PROCEDURAL BACKGROUND

A judgment of dissolution was entered on April 7, 2003, as to the marriage of Corrales and plaintiff and respondent Deyra Arevalo. The judgment provided that Corrales would pay \$250 a month in child support for each of the couple's three children. On August 12, 2003, Corrales filed an order to show cause for modification of child support. The court decreased his support obligation to \$473 a month, commencing on July 1, 2003.

On September 13, 2011, DCSS filed a notice regarding payment of support and substitution of payee, seeking to recover child support owed by Corrales. On March 7, 2012, Corrales filed a request for judicial determination of support arrearages. His documentation showed that he paid less than the full amount ordered in some years but paid more than the amount ordered in other years. It also showed that he believed his

child support obligation was reduced to \$400 a month in September 2006 and to \$200 a month in January 2011. In an attached statement, he asserted that he and Arevalo had agreed to a reduction in the amount and that they had also agreed that he would deposit support payments into the bank account of their now-adult daughter, Marilyn. Both Arevalo and DCSS filed responses. Arevalo denied having any agreement to alter the amount of child support owed to her or to have the money deposited into Marilyn's bank account. She stated that the money given to Marilyn was to assist with Marilyn's expenses while she was attending a university and was not child support.

The court held an evidentiary hearing on September 17, 2012, at which both Corrales and Arevalo testified. DCSS introduced evidence that Corrales's current support obligation was \$250 a month and that the arrearages totaled \$34,331.78 as of September 12, 2012. The court determined that Corrales was entitled to credit for certain payments not reflected in DCSS's accounting. It set a further hearing on November 29, 2012, for the limited purpose of obtaining an updated accounting from DCSS reflecting the credits awarded by the court. At that hearing, the trial court determined that as of November 10, 2012, Corrales owed child support in the amount of \$19,300.16 plus \$9,383.79 in interest on the arrearages.

Corrales filed a notice of appeal on November 29, 2012. The order after hearing was filed on December 14, 2012. We deemed the notice of appeal to have been taken from the December 14, 2012 order.

LEGAL ANALYSIS

Corrales's Contentions.

In his opening brief, Corrales states that he seeks credit for all of the child support payments that he put directly into the bank account of the parties' daughter, Marilyn. He cites a written statement by Marilyn that from September 2006 until December 2010, Corrales was giving her \$400 a month representing child support owed for her brother, Edgar, as part of an agreement between Corrales and Arevalo.^{1,2} Corrales states that Arevalo is lying, and he complains that the trial court refused to allow Marilyn to testify at the November 29, 2012 hearing or consider her written statement.

The record does not show that Corrales asked to have Marilyn testify at the hearing on November 29, 2012, and was refused. The sole subject of the hearing was receipt of the accounting from DCSS the court had ordered on September 17, 2012. The court informed the parties that the time to present evidence was on September 17, and that no further evidence or argument would be accepted. (The record provides no context

¹ Edgar, who was born in February 1997, was the only remaining minor child as of September 2006. Child support had terminated as to the daughters no later than their 19th birthdays. Marilyn turned 19 in March 2006, and the older daughter, Deyra, turned 19 in February 2005.

² Corrales asks that we take judicial notice of a statement executed by his daughter Marilyn on September 27, 2013. This statement is similar to the written statement which appears in the record on appeal, which Corrales submitted as part of his request for judicial determination of arrearages. Evidentiary documents created by a party are not a proper subject for judicial notice. (See, e.g., *South Shore Land Co. v. Petersen* (1964) 226 Cal.App.2d 725, 745-746 [official maps and surveys subject to judicial notice; privately prepared maps not subject to judicial notice].) Accordingly, we deny the request for judicial notice.

for this statement; it was not made in response to any request for further evidence which appears on the record.) At the end of the hearing, Corrales asked, “So I could not ask any questions?” He did not explain what questions he wanted to ask, nor did he state that he wanted to have Marilyn testify.

After the close of evidence, a trial court may, in its discretion, grant a party’s request to reopen for further evidence. (*Guardianship of Phillip B.* (1983) 139 Cal.App.3d 407, 428.) Here, as noted, the record does not include any request by Corrales. The record does support the inference that he made such a request but did so off the record. However, it is the appellant’s burden to produce a record which demonstrates error. (*Aguilar v. Avis Rent A Car System, Inc.* (1999) 21 Cal.4th 121, 132.) Failure to provide an adequate record requires that the issue be resolved against the appellant. (*Maria P. v. Riles* (1987) 43 Cal.3d 1281, 1295.)

Corrales’s contention that Arevalo was lying about their agreement is essentially a request that we reweigh the evidence and determine independently whether the evidence supported Corrales. An appellate court does not reweigh the evidence or independently determine the relative credibility of witnesses. (*People v. Young* (2005) 34 Cal.4th 1149, 1181.) Moreover, because Corrales did not provide a reporter’s transcript of the September 17, 2012 hearing, we must conclusively presume that the evidence presented

at that hearing supported the trial court's ruling.³ (*Estate of Fain* (1999) 75 Cal.App.4th 973, 992.)

DCSS's Contention.

DCSS controverts Corrales's assertions of error but nevertheless asks us to reverse the judgment and remand for further proceedings. It states that the accounting it submitted to the trial court may have been based on the superseded April 7, 2003 order for child support in the amount of \$250 a month per child until each child became emancipated. Under that order, by the date of the hearing on arrears, Corrales's obligation was \$250 a month because only one child was still a minor. DCSS points out that on August 12, 2003, the trial court reduced child support to \$473 a month, and that any arrearages from July 2003 through November 20, 2012, should be based on the August 2003 order. It asks that we reverse the November 29, 2012 order and remand the matter to the trial court for the purpose of determining the correct amount of arrears owed, consistent with both child support orders.

As a general rule, a respondent who has not appealed from the judgment may not assert error. (*Adoption of H.R.* (2012) 205 Cal.App.4th 455, 466.) A limited exception to this rule is provided by Code of Civil Procedure section 906, which states in pertinent part: "The respondent . . . may, without appealing from [the] judgment, request the reviewing court to and it may review any of the foregoing [described orders or rulings]

³ The only exception to this rule applies when the asserted error appears on the face of the record despite the absence of a reporter's transcript. (*Estate of Fain, supra*, 75 Cal.App.4th at p. 992.)

for the purpose of determining whether or not the appellant was prejudiced by the error or errors upon which he relies for reversal or modification of the judgment from which the appeal is taken.” “““The purpose of the statutory exception is to allow a respondent to assert a legal theory which may result in *affirmance* of the judgment.” [Citations.]”” (*Adoption of H.R.*, at pp. 466-467, italics added.) Here, DCSS asserts possible error⁴ and argues for reversal of the judgment. It has no standing to do so.

In any event, the record does not support the conclusion that the trial court erred in its determination of the amount owed by Corrales. The record does not indicate how the trial court determined the amount of arrearages. It shows only the credits the court awarded to Corrales. The record does not include the accounting prepared by DCSS for the November 29, 2012 hearing, and the case balance history submitted by DCSS for the September 17, 2012 hearing does not show how DCSS determined the balance owed by Corrales. Rather, it shows a zero balance as of November 2011, a balance of \$250 as of December 2011, and a balance of \$32,992.56 as of January 2012, with no explanation as to how DCSS arrived at that amount. However, because there is no reporter’s transcript of the September 17, 2012 hearing, at which the court took evidence, we must conclusively presume that the evidence presented at that hearing supported the trial court’s ruling. (*Estate of Fain, supra*, 75 Cal.App.4th at p. 992.) Accordingly, even if

⁴ DCSS does not assert that the trial court erred in the amount it determined Corrales owed; it asserts only that the court might have relied on what might have been erroneous information supplied by DCSS. It also does not explain whether it believes the amount of arrearages found by the trial court was too large or too small.

we could entertain respondent's claim of error, or even if Corrales had joined in this argument in a reply brief, we would be required to affirm the judgment on that basis.⁵

DISPOSITION

The judgment is affirmed. Costs on appeal are awarded to respondent San Bernardino County Department of Child Support Services.

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McKINSTER
Acting P. J.

We concur:

KING
J.

MILLER
J.

⁵ Corrales did not file a reply brief. Neither party has sought to augment the record on appeal to include either a reporter's transcript of the September 17, 2012 hearing or the accounting DCSS prepared for the November 29, 2012 hearing.